



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-1370 FAX (603) 271-1381



Mr. Gene Cordes
Board of Selectmen
Town of Fremont
295 Main Street
Fremont, NH 03044

Re: Town of Fremont
Municipal Burn Site

**ADMINISTRATIVE FINE
BY CONSENT**

No. AF 02-017

I. Introduction

This Administrative Fine by Consent is entered into by and between the Department of Environmental Services, Air Resources Division, ("the Division") and the Town of Fremont, pursuant to RSA 125-C: 15, I-b. This Administrative Fine by Consent is effective upon signature by all parties.

II. Parties

1. The Department of Environmental Services, Air Resources Division ("DES") is a duly constituted administrative agency of the State of New Hampshire, having its main office at 6 Hazen Drive, Concord, NH.
2. The Town of Fremont ("the Town") is a duly-constituted municipality of the State of New Hampshire having a mailing address of 295 Main Street, Fremont, NH.

III. Background

1. RSA 125-C authorizes DES to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, DES has adopted NH Admin. Rules Env- A 100 *et seq.*
2. RSA 125-C:15, I-b(b) authorizes the Commissioner of DES to impose administrative fines of up to \$2,000 per violation for violations of RSA 125-C and rules adopted pursuant thereto.
3. The Town operates a solid waste transfer station and burn pile located at 113 Danville Road in Fremont, NH ("the Facility"), and more particularly identified on Tax Map 2, as Lot 31.
4. Env-A 1001.04(a)(2) requires any city or town to obtain authorization from the Division prior to burning brush or untreated wood, provided that the material originates in the State. The restrictions are further defined in the *Authorization to Burn Brush and Untreated Wood*, No. 13652 ("the Authorization to Burn") which was issued by DES on October 9, 2000. The Authorization to Burn requires the Town to operate its burn pile in accordance with Env-A 1000.

V. Allegations

1. On March 15, 2001, the Division issued Letter of Deficiency ("LOD") No. ARD 2001-006 to the Town for violations of the Authorization to Burn and Env-A 1000.
2. On April 2, 2001, the Division received a letter from the Town responding to the LOD. In response, the Town agreed to burn only brush and untreated wood as described in Condition 2 of the Authorization to Burn and Env-A 1001.04(a)(2), separate materials that do not meet the specifications of Condition 2 of the Authorization to Burn, refrain from burning tires, and conduct all burning activities in accordance with the Authorization to Burn and Env-A 1000.
3. On June 6, 2001, Division personnel conducted a follow-up inspection at the Facility and observed charred non-conforming materials in the burn pile including: painted wood, furniture, plywood, manufactured wood, and assorted metals. The Division inspector observed the following non-conforming materials in the burn pile: sofa, cabinets, treated wood, furniture, plywood, cardboard, sheet rock, shingles, painted wood, wafer board, carpeting, pressure treated wood, tires and 5 gallons of an unknown liquid. During the June 6, 2001 inspection, the Division inspector left two copies of the June 6, 2001 *Notice of Inspection*, a copy of the open burning rules, and open burning fact sheets at the Town Office of Selectmen.
4. On September 4, 2001, the Division received a letter from the Town in response to the June 6, 2001 inspection. The Town stated that shortly after the June 6, 2001 inspection, the Town took the following steps: removed non-conforming materials from the burn pile, burned the remaining brush in early July 2001, removed the ash from the site in a bulk trash dumpster, dumpster and tipping receipts document that fifteen, 30 yard containers were sent to the Turnkey Landfill, the Facility has a strict gate policy, and continues to work on ways to improve the *bulky collection days*.
5. On December 18, 2001, the Division called Mr. Gene Cordes, Chairman Board of Selectmen for the Town, and informed him of the Division's decision to take enforcement action for the violations discovered during the June 6, 2001 inspection. A meeting was scheduled for January 17, 2002 to further discuss the violations and possible settlement.
6. On January 3, 2002, the Division received a letter from the Town. The letter stated that the Town had implemented changes at the Facility to mitigate future violations. Such actions included: segregating recyclable materials, allowing for only approved materials in the burn pile, and improving site security.
7. In its January 3, 2002 letter, the Town also enclosed copies of its Administrative Order # 2001-01 and Administrative Order # 2001-02 issued by the Town Board of Selectmen on December 31, 2001. Administrative Order #2001-01 states that: "[a]ll materials to be placed, dumped, or otherwise deposited at the Town's property at 113 Danville Road for the purpose of burning under permit # 13652 **may only be accepted on the collection days designed by the Board of Selectmen** when direct supervision is present" (emphasis in original). Administrative Order #2001-02 states that "[p]rior to burning, under NH DES Permit # 13652 of the "Burn Pile" at the Town's property at 113 Danville Road (Bulky Collection Site), the burn pile shall be inspected for its content by one member of the Board of Selectmen and the Town Fire Chief or his designee."

8. The Town violated Env-A 1001.04(a)(2), and Authorization to Burn by burning materials other than brush or untreated wood at the Facility.

V. Administrative Fines, Payment, Waiver of Hearing

1. Pursuant to RSA 125-C:15, the Division has determined the violation identified in IV. 7 above to be major deviation from the requirements with a major potential for harm. RSA 125-C:15, I-b(b) specifies a fine range of \$1,501-\$2000. Based upon the Division's assessment of the environmental impact of the violations and the Towns' compliance history, the Division is seeking a fine of \$1,550 for this violation.

2. DES agrees to suspend the \$1,550 fine contingent on the Town's compliance with the following:

a. Conduct all future burning in accordance with Env-A 1000 and the Authorization to Burn for a period of two years from the date of execution of this Agreement by the Town and the Commissioner of DES;

b. Within 30 days of execution of this Agreement, the Town will develop and submit to DES for review and approval an informational flyer identifying proper procedures for burn pile use. Also, the flyer will address the hazards associated with burning non-conforming materials such as painted wood, treated wood, plastic, etc. The flyer will be based on DES's open-burning Fact Sheet (copy enclosed). Upon approval by DES, distribute this flier to staff, volunteers, and all persons involved in the burn pile activity, and post the flyer in (or a) prominent location(s) at the Facility;

c. Within 30 days of execution of this Agreement, the Town will Post "Do's and Don'ts" signs at the Town which point out proper materials to be burned;

d. Consistent with Administrative Order #2001-01 issued by the Town Board of Selectmen, the Town will enforce a stricter gate policy and post the hours that the Facility is open;

e. Consistent with Administrative Order # 2001-02 issued by the Town Board of Selectmen, the Town will operate the burn pile at the Facility in accordance with the following: except for materials that come directly from town Departments, all materials placed, dumped, or otherwise deposited at the Facility for the purpose of burning may only be accepted on the collection days designated by the Board of Selectmen and when direct supervision is present; and

f. Consistent with Administrative Order # 2001-02, the pile shall be inspected prior to burning at the Facility.

3. If the Town fails to comply with the terms of this Administrative Fine by Consent or violates any applicable provision with two years of execution of this Administrative Fine by Consent, regardless of when the determination is made that the violation occurred, the suspended portions of the fine shall be due and payable upon notice from DES, without opportunity for further hearing or appeal.

4. Any payment that becomes due pursuant to V. 1, 2 and 3 above shall be paid, by certified check made payable to: "Treasurer, State of New Hampshire" and mailed to:

DES Legal Unit
P.O. Box 95
Concord, NH 03302-0095

5. If any payment is made by check or money order that is returned due to insufficient funds pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the check or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to the amount of the check or money order, to cover the costs of collection.


6. By executing this Administrative Fine by Consent, the Town waives its right to a hearing on or any appeal of the administrative fines identified in Paragraph 1, and agrees that this Administrative Fine by Consent may be entered into and enforced by a court of competent jurisdiction.

7. The effective date of this Agreement shall be the date on which it has been signed by an authorized representative of the Town, the Director of the Air Resources Division and the Commissioner of DES.

8. No failure by DES to enforce any provision of this Administrative Fine by Consent after any breach or default shall be deemed a waiver of its rights with regard to that breach or default, nor shall such failure be construed as a waiver of the right to enforce each and all of the provisions of this agreement on any further breach or default.


Town of Fremont

COPY

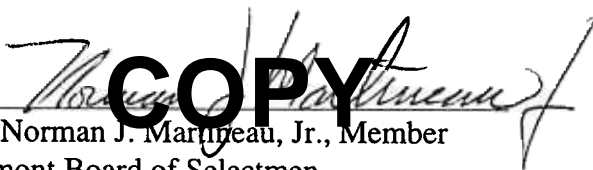
By: 
Gene Cordes, Chairman
Fremont Board of Selectmen
Duly Authorized

Date: 07-02-02

COPY

By: 
Richard C. Clark, Member
Fremont Board of Selectmen
Duly Authorized

Date: 07-02-02


COPY
By: Norman J. Marinneau, Jr., Member
Fremont Board of Selectmen
Duly Authorized

Date: 07-02-02

Department of Environmental Services


COPY
Robert R. Scott, Chief Air Programs Manager
Air Resources Division

Date: 7-12-02


COPY
George Dana Bisbee, Assistant Commissioner
Department of Environmental Services

Date: 7/15/02

cc: G.D. Bisbee, Assistant Commissioner
R. Scott, DES Chief Air Programs Mgr.
G. Rule, DES Legal Unit
R. Reed, DES-WMD
T. McCusker, EPA, Region I
Enforcement file



AUTHORIZATION TO BURN BRUSH AND UNTREATED WOOD



DATE RENEWED: 1/1/2002 TOWN: Fremont AUTHORIZATION NO: OB-00013652

The New Hampshire Department of Environmental Services hereby authorizes the **Town of Fremont, New Hampshire** to operate a municipal burn site for the open burning of brush with attached leaves and untreated wood generated from construction or demolition of a building, provided the material originated in the state. The authorized burn site is located at 113 Danville Rd. on Tax map 2, Lot number 31 in Fremont, New Hampshire.

This authorization is issued subject to the following conditions:

- 1 All burning shall be conducted in accordance with the requirements of RSA 125-C and the N.H. Code of Administrative Rules Env-A 1000.
2. Only the following materials may be burned at the burn site:
 - a. **"Brush"**, defined to mean tree tops, limbs, saplings, and tree cuttings, to include attached leaves which are five inches in diameter or less.
 - b. **"Untreated Wood"**, defined to mean any timber, board, or sawn dimensional lumber which has not been painted, treated, coated, or preserved. This term does not include any manufactured building material, such as **plywood** or **waferboard**.

This burn authorization shall expire on 12/31/2004

BY EXERCISING ANY RIGHTS UNDER THIS BURN AUTHORIZATION, THE MUNICIPALITY HAS AGREED TO ALL TERMS AND CONDITIONS. Failure to comply could result in administrative fines, civil, or criminal penalties, suspension, or revocation of the burn authorization.

Issuance of this burn authorization shall not affect the municipality's obligation to obtain all requisite federal, state, or local permits, licenses or approvals. Further issuance of this burn authorization shall not affect the municipality's obligation to comply with all other applicable federal, state, district or local ordinances, laws, approvals, or conditions pertaining to the facility.

Kenneth A. Colburn

Director

New Hampshire Department of Environmental Services
Air Resources Division